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STATE FOR WHA/AND
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SUBJECT: POLITICIZED JUSTICE: THE CASE OF REPSOL

¶1. (SBU) Summary: The Government of Bolivia has pursued a highly politicized legal case against Spanish/Argentine-owned Repsol YPF, accusing Bolivia's second-largest gas producer of contraband and tax evasion. Repsol Bolivia President, Julio Gavito, was arrested for these charges on March 15, and after being released on bail, resigned from his position on March ¶22. Industry representatives speculate variously that the GOB has targeted Repsol because the company embodies the hated "neoliberal" economic model; because the government has made a deal with Brazilian giant Petrobras to increase its market dominance; because Repsol did not pay the required "fines" to Bolivian Customs; and/or because the government wants to soften company positions in the run up to negotiations. Whatever the real reasons for the government's action, justice in the Repsol case is not blind but rather wide-eyed and hungry in its pursuit of a political result.
End Summary.

The Political Plan

¶2. (SBU) Throughout the election campaign and before the inauguration, MAS leaders pledged to crack down on companies that had committed fraud, trafficked in contraband or evaded taxes. Many observers speculated that, once in power, the MAS would seek to send a political message -- that it was firmly in charge -- and to show impatient supporters it was moving against hated "transnationals" on the path to promised nationalization. The MAS's public pledges were particularly worrisome for Spanish/Argentine gas company Repsol YPF (Bolivia's second-largest gas producer and holder of the country's largest gas reserves), and also U.S.-invested Chaco. Allegations that both companies had engaged in contraband, tax evasion and other crimes had been circulating for months. At the same time, given the pervasiveness of corruption and contraband in Bolivia -- close to 70% of the economy is estimated to be informal, much of it dealing in contraband goods of all kinds, including energy -- the open targeting of these companies strongly suggested the search for a politically convenient scapegoat.

Raid on Repsol Offices

¶3. (SBU) On March 9, the government followed through with its threat. Under the glare of TV cameras, prosecutors in Santa Cruz raided the offices of Andina, a local affiliate of Repsol, to apprehend its two top executives, claiming that the company had illegally exported USD 9.2 million of oil between July 2004 and February 2005. The executives were not found in the raid, but on March 15, when he presented himself to the prosecutor's office, Repsol Bolivia President Julio Gavito was arrested and held in custody for one night. (He was released on bail the following day). On March 22, Gavito resigned his position as president in order to focus on his defense, which he told us will take issue with the many procedural flaws in the government's case. On March 27, according to news reports, district judges determined that Repsol was not legally liable for the USD 50,000 (400,000 Bolivianos) bond paid for the release of Gavito and another Repsol executive after their arrest. Gavito continues to be under a bail order that prevents him from departing the country without the government's express permission.

¶4. (SBU) In a March 20 meeting, Gavito told us that Repsol had exported oil without the proper papers, but had not evaded any taxes and had subsequently obtained the proper documentation. He added that Chaco, by contrast, had failed to obtain the necessary export documents, and that the lack of a paper trail in Chaco's case had probably allowed the case to fizzle out. Another industry insider told us Chaco had paid a USD 1 million "fine" to Bolivian Customs, which caused the case to vanish.

The Reasons

¶5. (SBU) Industry representatives, including Gavito, speculate variously about the GOB's real reasons for targeting Repsol. Some suggest that the company was singled out for being a "big fish," and that moving against it would guarantee high political impact. Others say it reflects the GOB's animosity toward privatized companies, of which Repsol is a prime example, and by extension toward the "neoliberal economic model," which government officials claim has seriously damaged Bolivia's economy. Some whisper about a secret government deal with Petrobras to enable the Brazilian

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giant to increase its current market dominance, while others suggest a similar agreement with PdVSA, to reinforce the Venezuelan firm's position in Bolivia's gas industry.

¶6. (SBU) Many surmise that Repsol's reluctance to pay required "fines" to Bolivian Customs may have caused Bolivian "justice" to clamp down in this case (which suggests the ironic possibility that Repsol is being pursued on corruption charges for refusing to engage in corruption). And almost everyone believes the government wants to make a show of force and to intimidate hydrocarbons companies into softening their positions in the run up to coming contract negotiations.

Comment:

¶7. (SBU) The GOB persecution of Repsol has U.S.-owned hydrocarbons companies worried about their own futures (septel), and has heightened their distrust of the Morales administration. Whatever the reasons for the government's action, justice in the Repsol case is not blind but rather wide-eyed and hungry in its pursuit of a patently political result. End comment.

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